

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

RHYS JOHNSON,

Plaintiff,

-against-

5:24-CV-20 (LEK/MJK)

PRESIDENT JOE BIDEN,

Defendant.

MEMORANDUM-DECISION AND ORDER

I. INTRODUCTION

Plaintiff Rhys Johnson filed this action against Defendant President Joe Biden on January 3, 2024, alleging breach of contract. Dkt. No. 1 (“Complaint”). On January 23, 2023, the Honorable Mitchell J. Katz, United States Magistrate Judge, issued a Report-Recommendation and Order recommending that the Complaint be dismissed without prejudice and without leave to amend. Dkt. No. 7 (“Report and Recommendation”). On April 13, 2024, Plaintiff filed an amended complaint. Dkt. No. 9 (“Amended Complaint”).

No party has filed objections to the Report and Recommendation. For the reasons that follow, the Court adopts the Report and Recommendation in its entirety and strikes the Amended Complaint.

II. BACKGROUND

The Court assumes familiarity with Judge Katz’s Report and Recommendation, as well as with Plaintiff’s factual allegations as detailed therein. See R. & R. at 3–4.

III. STANDARD OF REVIEW

“Within fourteen days after being served with a copy [of the Magistrate Judge’s report and recommendation], any party may serve and file written objections to such proposed findings

and recommendations as provided by rules of court.” 28 U.S.C. § 636(b)(1)(C); see also L.R. 72.1. However, if no objections are made, a district court need only review a report and recommendation for clear error. See DiPilato v. 7-Eleven, Inc., 662 F. Supp. 2d 333, 339 (S.D.N.Y. 2009) (“The district court may adopt those portions of a report and recommendation to which no timely objections have been made, provided no clear error is apparent from the face of the record.”). Clear error “is present when upon review of the entire record, the court is left with the definite and firm conviction that a mistake has been committed.” Rivera v. Fed. Bureau of Prisons, 368 F. Supp. 3d 741, 744 (S.D.N.Y. 2019) (cleaned up). Additionally, a district court will ordinarily refuse to consider an argument that could have been, but was not, presented to the magistrate judge in the first instance. See Hubbard v. Kelley, 752 F. Supp. 2d 311, 312–13 (W.D.N.Y. 2009) (“In this circuit, it is established law that a district judge will not consider new arguments raised in objections to a magistrate judge’s report and recommendation that could have been raised before the magistrate but were not.” (internal quotation marks omitted)). Upon review, a court “may accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge.” 28 U.S.C. § 636(b)(1)(C).

IV. DISCUSSION

No party objected to the Report and Recommendation “[w]ithin fourteen days after being served with a copy” of it. 28 U.S.C. § 636(b)(1)(C). Accordingly, the Court reviews the Report and Recommendation for clear error. Having found none, the Court approves and adopts the Report and Recommendation in its entirety. As the Complaint is dismissed without prejudice and without leave to amend, Plaintiff’s Amended Complaint, filed after the Report and Recommendation, will be stricken.

V. CONCLUSION

Accordingly, it is hereby:

ORDERED, that the Report and Recommendation, Dkt. No. 7, is **APPROVED and ADOPTED in its entirety**; and it is further

ORDERED, that the Complaint, Dkt. No. 1, is **DISMISSED without prejudice and without leave to amend**; and it is further

ORDERED, that the Complaint, Dkt. No. 9, is **STRICKEN**; and it is further

ORDERED, that the Clerk close this action; and it is further

ORDERED, that the Clerk serve a copy of this Memorandum-Decision and Order on all parties in accordance with the Local Rules.

IT IS SO ORDERED.

DATED: June 6, 2024
Albany, New York


LAWRENCE E. KAHN
United States District Judge